Dissent and Treason: Lambdin P. Milligan, Indiana, and the Civil War

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It is a great honor and privilege for me to speak today about Lambdin P. Milligan. Milligan was a prominent legal figure in this part of Indiana in the middle part of the nineteenth century, and, for a short period, was an important political figure in Indiana. Today, he is well known for lending his name to an important United States Supreme Court case and ruling, *Ex parte Milligan*. Relatively little is known about Lambdin Milligan. There are reasons for this obscurity, reasons which I will address. However, I want to introduce Milligan to you, and provide historical background on him, and on the events that prompted *Ex parte Milligan*, which will inform our understanding of that landmark ruling.

It is perhaps fitting that we are discussing Lambin Milligan here in Fort Wayne. Though he was a resident of Huntington, in Huntington County, one county to the west of here, Fort Wayne was the leading city of northeastern Indiana, and dominated the 10th and 11th Congressional Districts in the mid-nineteenth century. Allen County was then in the 10th Congressional District, which encompassed the northeastern corner of Indiana. The 11th District lay immediately to the south, and included Wabash, Huntington, Wells, Adams, Grant, Blackford, Jay, Howard, Tipton, Madison, and Hamilton counties. Milligan was an active member of the Democratic Party in a strongly Democratic region of the state. Indeed, Republicans during the Civil War called Fort Wayne the "copperhead capitol of Indiana," a reflection of its stalwart opposition to the Northern war effort and that of the region around this city. Allen County and the surrounding counties of northeastern Indiana were a bastion of

Democratic conservatism, where opposition to the perceived radical initiatives of the Republicans in Congress and the administration of President Abraham Lincoln was notably strong. Indiana's wartime Republican governor, Oliver P. Morton, certainly understood the strength of the Democratic opposition to his party's governance from the northern parts of his state. Once, in early 1863, the commander of the U.S. Army in middle Tennessee, Major General William Rosecrans, in the midst of a massive wave of desertion which saw his army shrink by about 30,000 troops, wrote to Governor Morton to complain of the difficulty his officers were having in the 2nd Congressional District of southern Indiana in arresting deserters. Morton wrote a testy letter in response to state that southern Indiana was nothing compared to problematic northern Indiana.

Governor Morton referred to northern Indiana as a bastion of opposition to himself and fellow Republican, President Lincoln. This opposition was fuelled by Democratic ideology. Often when historians speak of Northern opponents to the federal war effort, they refer to persons who were born or lived in the South and who migrated to Indiana and neighboring states, and who brought their cultural, social, economic, and political ties to the South with them. This is certainly true, but is an over-generalization. Southern Indiana was largely populated by people from the South. However, many of those migrants—free white people—left the South to escape the economic and political stranglehold of slavery. They settled in states where slavery did not dominate life. Northern Indiana in the first half of the nineteenth century was populated in part by migrants from the South, but it was also heavily populated by migrants from New England and the Middle Atlantic states of New York and Pennsylvania, people who traveled overland through Ohio, or floated across the Erie Canal through New York state to the Great Lakes. These people had no direct ties to slavery. But many of them espoused allegiance to the

Democratic Party, and believed in the concepts and intellectual constructs that undergirded the Democratic Party, ideas such as states' rights, individual rights, and limited government. In turn, their Democratic ideology led them to oppose, among other things, the Lincoln administration's efforts to abolish Southern slavery in order to end the Southern rebellion. Presidents Franklin Pierce of New Hampshire and James Buchanan of Pennsylvania, Abraham Lincoln's predecessors in office, were staunch northern Democratic anti-abolitionists.

I risk over-generalization myself in an effort to be brief by stating that adherents of the Democratic Party were primarily cultural conservatives. Elements of their antebellum ideology harkened back to a pre-capitalist, agrarian world that prevailed in the eighteenth century. They looked to a patriarchal world based on the individual household which focused on subsistence farming—the production of food crops that would satisfy the needs of the household. Inherent in this worldview was a deep distrust of commercial markets. They perceived many dangers in growing or producing surpluses beyond the needs of the household. In tandem with this household focus existed a desire for local control of many aspects of life: local, congregational independence in church polity, the primacy of local governance, and local markets.

However, the early decades of the nineteenth century witnessed the development of new forms of economic activity—factory production and wage labor, the development of extensive trading networks facilitated by steam-powered riverboat and ocean transportation and, ultimately, the railroad—that upset the adherents of the localist, agrarian worldview. What historians call the Market Revolution of the early-nineteenth century created upheaval in all areas of life which spilled over into the politics of the Jacksonian era. Many Democrats in the coming years gradually accommodated themselves to the realities of new market and social

forces, but many resisted. Democrats in the then western states of Ohio, Indiana, Illinois, Wisconsin, and Iowa complained bitterly of eastern capitalists oppressing the western farmers.

Amid this contentious mix, mid-century witnessed growing sectional conflict between the increasingly industrial North with its booming factories and free labor force and the agricultural South and its slave labor. Many Democrats in the North had no qualms about Southern slavery. They argued that the United States Constitution and laws allowed and protected the enslavement of people. They viewed the abolitionists—those opposed to slavery and active in efforts to abolish the practice—as the sources of national discord, and many supported Southern efforts to silence abolitionist speech and squelch abolitionist efforts to contain and end slavery. Abolitionists in Indiana were few in number before the Civil War, and the general sentiment in the state was to oppose any effort to interfere with slavery in the South.

An important ingredient mixed into this pot is race. A strong element in Democratic ideology in the antebellum and war years was the notion that African-Americans were inferior people to whites. Many Democrats believed slavery was the rightful role for African-Americans. However, Democrats were not the only racists. Indiana's Whigs (most of whom later became Republicans) joined with Democrats in 1851 to vote overwhelmingly to prohibit African-Americans from moving to the state. But race mattered significantly to Democrats. During the war, and especially in the aftermath of Lincoln's Emancipation Proclamation, Democratic politicians played the race card frequently in their efforts to mobilize their party to action. Race baiting was a common theme of Democratic stump speakers and Democratic newspapers.

With this as background, we may address the life of Lambdin P. Milligan. Milligan was born in Belmont County, Ohio, in the southeast portion of the state near the Ohio River, in 1812.

His parents were farmers, his father from Pennsylvania and his mother from Virginia. He was bookish, and for a short time taught school in his youth. He eventually entered the law offices of a nearby attorney and read law, joining the bar in 1835. It is often noted with irony that Edwin M. Stanton, Lincoln's Secretary of War for most of the Civil War, was a fellow student and friend at this time. Stanton was instrumental in the military arrest of his erstwhile friend.

Milligan married in 1835, and eventually helped to raise three sons. He and his family moved to Huntington in 1845, where he continued to practice law. He developed a substantial practice in the courts in and around Huntington. Milligan is usually described as a Roman Catholic. However, historians have overlooked that according to testimony at his treason trial, at the time of his arrest he worshipped at an "Old School" Presbyterian church in Huntington. The Presbyterian Church in the United States experienced a split in 1837 over issues having to do with ecumenism, evangelism, and slavery. The "Old School" wing countenanced slavery, whereas the "New School" tended to abolitionism. Milligan's "Old School" pastor was a fiery anti-war Democrat.

Milligan suffered considerably from various serious physical problems during his years in Huntington, but continued his legal practice. At the time of his arrest for treason in October, 1864, he was bedridden. His physician informed the army officer who arrested him that Milligan suffered from erysipelas, a severe bacterial infection in the skin, and should not be moved. Milligan was quite ill during his trial and imprisonment.

Evidence suggests that Milligan had long been a Democrat, though not a party leader. Perhaps he refrained from politics owing to his poor health. Milligan only came to take an active leadership role in Democratic Party politics relatively late in his career. Owing to the paucity of

surviving personal papers of Milligan, we cannot accurately gauge his reactions to rebellion and war. It is possible that, like many other Democrats, the political turmoil and upheaval in Indiana and the country deriving from the Civil War awakened his political sensibilities. Milligan may have responded to the Lincoln administration's efforts to put down the rebellion by military force instead of more conciliatory measures. He may have abhorred the suspension of the privilege of the writ of habeas corpus and the numerous arrests of Democrats for political speech throughout the North. He may have condemned the violent attacks on Democratic newspapers and speakers that occurred. It is during the years of the rebellion that we begin to see references in Indiana newspapers to Milligan making frequent speeches in Huntington and neighboring counties. In his speeches he voiced his opposition to the war to coerce the rebels. He attempted but failed to obtain the Democratic Party nomination to run for Congress in the 11th Congressional District in 1862. During that campaign Milligan became one of the most outspoken anti-war speakers in the region. A Huntington Republican reported privately to Governor Morton that Milligan's speeches were "bolder and meaner than ever." A Republican newspaper reported that at a Whitley County Democratic rally in July, 1862, he declared that the Union cause was hopeless, and the Lincoln administration had deceived the volunteer soldiers into believing they fought to preserve the union. Rather, he stated, the Republican administration wished to let the South go, and aimed to yoke the West [meaning the Old Northwest states, including Indiana] to the East. The newspaper noted, "He claimed the *honor* of being the first man in Indiana who denounced this war as unnecessary, unjust and infamous." Shortly afterwards Morton's private secretary forwarded newspaper clippings of the Whitley County speech to the United States Attorney with the recommendation: "he should be arrested at once." However, the federal officer did not act in the matter.

Opposition to the war measures of the Lincoln administration increased after the president's announcement of the Emancipation Proclamation. 1863 saw significant desertion from the federal armies, often encouraged by letters from family and friends at home. Congress' passage of a conscription law in March, 1863, ratcheted up the opposition. Democrats increasingly vowed to resist what they viewed as the unconstitutional and illegal efforts of a coercive dictatorship. Milligan continued to make speeches to his Democratic friends that Republicans found objectionable. In August 1863 at a Blackford County Democratic meeting he stated he "considered separation [from the South] a fixed fact—and 'we' [meaning the western states] should go with the South, and cut loose from the East." The account reported that Milligan was careful not to counsel resistance to the draft. However, acts of resistance and defiance occurred in Huntington. In early July, three boxes containing 72 army muskets being sent by rail to a state militia company were stolen from the train station. State authorities failed to recover them. In the days that followed, an assembly of armed horsemen rode into the town and paraded through the streets in an effort to intimidate the local Republicans and show their defiance. Milligan gave an "inflammatory speech" to the assembled horsemen.

Milligan became a hero for many Indiana Democrats when in May, 1863, he successfully defended an Indiana legislator who had been arrested and tried by military commission for violating Major General Ambrose Burnside's infamous General Order number 38 forbidding criticism of the war policies of the Lincoln administration. Democratic State Senator Alexander J. Douglas, from nearby Columbia City in Whitley County who represented Whitley and Huntington counties, had gone to his native Ohio to attend his brother's wedding. While there, local Democrats called on him to be a last-minute replacement speaker at a Democratic rally in place of Clement L. Vallandigham, the West's leading opponent of the war. Two days

previously Vallandigham had been arrested at his home in Dayton by military authorities for criticizing the Lincoln administration and military policies. Douglas like many Democrats was shocked and angered by the Vallandigham arrest, and gave a fiery speech, condemning the administration and army for making illegal arrests, building up a despotism, blocking Democrats from voting freely, and asserted that the war was being carried on for abolition purposes. He advised Democratic voters to carry guns to the polls. He was a few days later arrested by military authorities in Ohio and sent to Cincinnati for trial by the same military commission that tried and convicted Vallandigham. Douglas secured the services of his neighbor, constituent, and political ally, Milligan, to defend him. In the military commission courtroom, Milligan conducted a calm and cool defense, at first denying the authority of the military commission to try a civilian. When that argument predictably did not wash with the army officers sitting as judges, he picked carefully at the weaknesses of the Judge Advocate's witnesses' testimony. Milligan's summation was a controlled, deliberate, and closely reasoned argument, displaying no courtroom bombast, but challenging the points of evidence presented by the judge advocate. The court found that Douglas was guilty of saying some of the inflammatory statements ascribed to him, but curiously found him not guilty of the charge. Douglas was freed, and returned to Indiana a Democratic hero and martyr. The Democratic newspapers in the area published Milligan's closing defense speech, winning much praise for the lawyer among the anti-Lincoln Democratic faithful.

State and federal officials in northeastern Indiana reported many signs of impending resistance to the government during this time in the spring and summer of 1863. A bloody riot occurred in Fort Wayne in early May. Later in that month, when the army commander at Indianapolis sent a squad of soldiers to Huntington to arrest the editors of the *Huntington*

Democrat newspaper for criticizing the Lincoln administration and military authorities, an armed crowd estimated to be upwards of 200 men prevented it. Reports of arson fires were frequent. Violent resistance to the draft enrollment occurred in several places; arms and gunpowder were reported to be flowing into the neighborhood and into the hands of the anti-war elements. Local officials frequently reported that local Democrats were organizing informal militia companies and drilling with the arms they were obtaining. Draft officials reported that many Democrats vowed to resist the draft and protect deserters, and were organizing and arming themselves to do so.

Republican state and federal officials had for some time also received reports with evidence pointing to the existence of secret conspiracies to resist the federal government and aid the Southern rebels. These reports began in Indiana in 1861, shortly after armed rebellion began. Attempts by Republican government officials to investigate and counteract the conspiracies using state and federal grand juries failed in the following months. Starting in 1862 Republicans warned publicly that a secret, pro-Southern organization which went by several names but was commonly called the Knights of the Golden Circle was abroad in the land. While some historians, most notably the late Frank Klement, have argued that these warnings of secret plots were merely fabrications made for political effect to smear Democrats with treason, I believe there is strong and overwhelming evidence that Republican politicians and army leaders were sincere in their warnings and genuinely feared the threat of uprising in the Old Northwest states. Their private communications at this time fully support the argument that government and military officials, based on the information and intelligence they collected on the secret organizations, took the threat of civil war in the Northern states seriously. Later, in the fall of 1863, the Knights of the Golden Circle organization took on the new name of the Organization

of American Knights. Still later, in 1864, the OAK renamed itself the Order of the Sons of Liberty.

Testimony of government witnesses at the military commission treason trials in Indianapolis in the fall of 1864 points to Lambdin Milligan playing a leading role in the secret organization in northeastern Indiana starting at least in the fall of 1863. Witnesses testified that Milligan was a member of the OAK, which later morphed into the Sons of Liberty. Frank Klement and other historians who have followed Klement's lead have argued that Milligan and others were accused of conspiracy based on fabricated and worthless testimony and evidence concocted to prove the existence of a non-existent plot. Klement conceded that Milligan was a member of the OAK and later the Sons of Liberty organization, but only in a political part of the group; Klement denied that Milligan was involved in the military core of the organization as created by leading conspirator H.H. Dodd of Indianapolis that planned a violent uprising.

During the dangerous summer of 1864, Milligan offered himself as a candidate for governor. He represented the peace wing of the Democratic Party, a faction with strong support but without the numbers to dominate the party. His candidacy was sounded defeated at the Democratic state convention in July. Democrats selected Indianapolis attorney Joseph E. McDonald to be their champion against Governor Morton. McDonald appears to have been untainted by the plot hatched by other leading Democrats.

By the summer of 1864, government spies who had infiltrated the secret organizations reported to Governor Morton and military commanders in Indiana and neighboring states that significant plots existed. The conspirators aimed to raise rebellion in Northern states by seizing government arms held in federal arsenals in Indianapolis, Chicago, and other points. With these

arms the conspirators planned to attack federal prisoner-of-war camps and force the release of Confederate prisoners of war held in them. P.O.W. camps in Indianapolis, Chicago, Columbus, and Johnson's Island near Sandusky were targeted. The released rebel soldiers would be armed, and all would march on Louisville, Kentucky, there to meet with Confederate cavalry and guerrilla forces. There they hoped to draw federal armies away from the battlefields of the South and relieve the pressure on the beleaguered Confederacy. The plan also aimed to upset the Presidential election come November by causing a collapse of confidence in the Lincoln administration. The plan was worked out with the assistance of Confederate army officers who operated as secret agents in the Northern states, and was financed by Confederate government representatives stationed in Canada.

It was an ambitious plan, calling for boldness and ruthlessness. However, it appears that those characteristics were lacking in most of the Sons of Liberty leadership, and the plot collapsed in August when several of the leaders balked. Military commanders in the Midwest, kept informed of the plot by their spies, were highly apprehensive and still feared that the plotters would be able to carry out their plans. However, Governor Morton, acting in full accord with the War Department and President Lincoln, saw the political potential in the situation and seized the opportunity to turn the situation to the government's advantage.

Morton gained approval from Washington to have the existing military commander in Indiana sacked. That officer, Brigadier General Henry B. Carrington, the architect of the spy network, had argued with Washington officials and Morton that the best method of dealing with the plotters was to try them in federal courts. In his place the War Department appointed Brevet Major General Alvin P. Hovey, an Indiana politician and former justice of the Indiana Supreme Court, and gave him extra authority to appoint courts martial in Indiana. Hovey acted on

intelligence gathered by Carrington's spies to arrest H.H. Dodd when boxes marked "Sunday School Books" but instead containing hundreds of revolvers and many thousands of rounds of ammunition were discovered and seized in Dodd's Indianapolis warehouse. Using his special authority, Hovey appointed a military commission and put Dodd on trial for treason. However, in early October in the middle of his trial Dodd escaped his federal prison cell and fled to Canada. Dodd's flight was interpreted by all as an admission of guilt, coloring his trial and those of others that followed, and played into the hands of Governor Morton and President Lincoln. Dodd was found guilty of treason in absentia.

In early October General Hovey ordered the arrest of other persons involved in the plots. Those arrested included William A. Bowles of French Lick, Horace Heffren of Salem, Stephen Horsey of Martin County, Andrew Humphreys of Greene County, and J.J. Bingham of Indianapolis, editor of the leading Democratic newspaper in the state and the chairman of the state Democratic Party. On October 5, an army captain with 50 soldiers at his command received orders to proceed to Huntington to arrest Lambdin Milligan. Traveling by regular train to Peru, they obtained a special locomotive and car and learned that Milligan's house was located near the train tracks three fourths of a mile west of Huntington. The captain and his force reached Milligan's house at midnight of the 6th, surrounded it, and arrested Milligan. They found him prostrate in bed, and the Milligan family protested that he had been sick for weeks and too sick to move. The officer found Milligan's physician, who gave his opinion that his patient could be taken to Indianapolis without injury. Milligan was taken to Indianapolis immediately, and lodged in a military prison in the city. In his arrest report the captain noted that while the locomotive was waiting, guarded, at the town's train station, groups gathered near the station and threatened to rescue Milligan. Wrote the captain: "My orders being to avoid as far as possible

the use of arms, I took no notice of the threats made, and left without coming into actual collision with them."

Hovey promptly put Milligan and the others on trial for treason before the military commission in Indianapolis. The trial, like that of Dodd's, created a national sensation. Newspapers gave minutely detailed reports of the testimony. Shortly after the trial began several of the defendants, most notably Horace Heffren and J.J. Bingham, turned state's evidence and testified for the Judge Advocate trying the prosecution case. Their evidence, and that of the government spies and other witnesses, painted a picture of a widespread plot to overthrow state and federal authority in Indiana and neighboring states with armed violence. Milligan was identified as one of the top leaders in the conspiracy. Witnesses testified that he was a Major General in the Sons of Liberty organization, in command of the northeastern quadrant of Indiana.

Witnesses testified that Milligan was present at Sons of Liberty meetings at which plans progressed to arm the organization to prepare for an uprising. The chief witness testifying about Lambdin Milligan was Henry L. Zumro, a physician from Rock Creek Township in neighboring Wells County. Zumro had early in the year been recruited by the chief draft officer in Indiana, Acting Assistant Provost Marshal General of Indiana Colonel Conrad Baker, to provide information on the secret organization known to be in existence in Huntington and Wells counties which threatened to disrupt the draft. Zumro, who had joined the Sons of Liberty in Wells and Huntington counties, supplied reports to Gen. Carrington about the organization, including information about Milligan. Zumro, Baker, and Carrington arranged for Zumro to be arrested by military authority to cement his reputation among the Sons of Liberty and allay suspicions. Zumro testified that in September Milligan had advocated resistance to the draft, and that armed men should hide in the woods from whence Milligan himself could kill twenty

men before he would be taken. Milligan's defense countered that he had been sick in bed, and could not have been where Zumro claimed he was and said the things he claimed he said. Furthermore, at one point defense counsel argued that Milligan joined the Sons of Liberty in an effort to "control and direct it so that it should do no mischief." However, that tactic was dropped quickly.

Milligan's defense focused on sullying the character of Zumro. Witness after witness testified that they thought Zumro's character and reputation to be bad. However, prosecution witnesses appeared shortly thereafter to say that Zumro's character and reputation were good. Several stated that nothing bad had ever been said of Zumro until the trial.

After nearly two months, in early December the case closed. During the trials Indiana state elections in October produced resounding Republican victories. Morton was elected to continue as governor, and Republicans regained majorities in both legislative chambers. The November presidential election saw Lincoln defeat the Democratic challenger, Gen. George McClellan. (As an aside, McClellan outpolled Lincoln in Allen and its surrounding counties.) Milligan, Bowles, and Horsey were found guilty by the military officers, and sentenced to death by hanging. The verdict was made public only in January, 1865.

Both Democrats and Republicans endeavored to obtain clemency for the condemned. Governor Morton, safely reelected, was among the number asking for clemency. After Lincoln's assassination, President Andrew Johnson in May, 1865, commuted the sentences to life imprisonment two days before they were scheduled to be hanged. Milligan and the two others were sent to the Ohio state prison at Columbus. Johnson eventually pardoned the prisoners a year later. A writ of habeas corpus had been filed in the federal circuit court in Indianapolis,

which kicked it up to the United States Supreme Court. The Supreme Court heard the case and handed down its ruling, *Ex parte Milligan*, in April, 1866, about which you will hear from Justice Sullivan.

Milligan, restored to freedom, sought vengeance against those who, he felt, had conspired to oppress him. In 1868 he filed a civil suit in the Huntington Circuit Court against the officers who had served on the military commission that found him guilty of treason, against Governor Morton (then serving in the United States Senate), Henry Zumro, General Hovey, the army captain who arrested him, the county provost marshal for Huntington County, and even the court reporter who compiled the transcript of the case and later published it. Milligan claimed conspiracy to make an illegal arrest and usurp authority to try him, as well as defamation. He requested $500,000 damages for the loss of his health, loss of business while in prison, and other offenses. The case was removed to the federal district court in Indianapolis, and dragged on until the spring of 1871. Milligan won his case, and was awarded $5 in damages. He lived in Huntington until his death in1899.

Like the other defendants in the treason trials, Lambdin Milligan and his family did not preserve his personal papers. Similarly, few letters of Milligan survive in the private correspondence of fellow Democrats and other contemporaries. What survives of him is a smattering of items that military intelligence secured and which the military prosecutor employed in the trial. So our knowledge of Milligan's personality and private thoughts is limited.

However, we can glean ideas from the political and social context of Milligan's times, and of his locale, which help us to form conclusions about his role in the contentious events of

the Civil War in Indiana. Milligan was embroiled in dangerous events at a very dangerous time, when politically-motivated violence was commonplace in the streets of Indiana's towns and villages, and in the rural by-ways, fields, and forests of the countryside. Men and women of Indiana fought over how the fundamental characteristics of their society and their government would be shaped by the events of the war. While massed armies were locked in battle in southern regions, men and women in the North holding to contenting ideologies fought each other to advance their viewpoints. Such was the political tension and level of fear in many neighborhoods in this region of the state and throughout Indiana that people banded together in secret groups, armed themselves, and swore to defend themselves and their like-minded neighbors from attack from their political adversaries, also their neighbors. At some point, thoughts of self-defense among some of them changed to plans to subvert government, a government they viewed as radically revolutionary and committed to an unconstitutional and illegal agenda. A number of Indiana citizens came to accept the need for a conservative counter-revolution to rectify the social and political order and reassert long-established ways. Lambdin Milligan actively participated in that transformation from self-defense to conservative revolution, and I believe the evidence suggests that he took a leadership role in the struggle to re-establish the traditional antebellum social order.